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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

Todd Heichel, Rudy Castro, Justin
Garmendia, Joshua Holgate and Randi
Pitts, Each Individually and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

Tri City Transport, LLC, SWWOOP,
LLC, and Michael Butler,

Defendants.

NO. 2:22-cv-1513-PHX-SMM

**MOTION FOR CLERK’S ENTRY
OF DEFAULT REGARDING
SEPARATE DEFENDANT
MICHAEL BUTLER**

Plaintiffs Todd Heichel, Rudy Castro, Justin Garmendia, Joshua Holgate and
Randi Pitts, by and through their attorney Samuel Brown of Sanford Law Firm, PLLC,
for their Motion for Clerk’s Entry of Default Regarding Separate Defendant Michael
Butler (hereinafter “Butler”), do hereby state and allege as follows:

1. Plaintiffs filed their Original Complaint against Defendants on September
8, 2022. *See* ECF No. 1.

1 2. On September 11, 2023, this Court granted Plaintiffs' Motion for
2 Alternative Service of Individual Michael Butler, allowing Plaintiffs to serve Butler by
3 publication pursuant to Ariz. R. Civ. P. 4(l)(1). *See* ECF No. 36.

4 3. In accordance with this Court's September 11th Order and Ariz. R. Civ.
5 P. 4(l)(1), around October 12, 2023, Plaintiffs' counsel approached a newspaper whose
6 circulation includes Maricopa, Yuma, and Yavapai Counties for purposes of publishing
7 the required Notice for four successive weeks. The Notice was published consecutively
8 during the weeks of November 17, 2023, November 24, 2023, December 1, 2023, and
9 December 8, 2023.

10 4. On December 21, 2023, Plaintiffs' counsel filed a copy of an affidavit
11 from the newspaper describing the Notice and the dates it was published. *See* ECF No.
12 41.

13 5. Butler's deadline for filing and serving an Answer or Motion to Dismiss
14 has passed.

15 6. Butler has not filed or served an Answer or Motion to Dismiss in
16 accordance with Rule 12(a)(1) of the FRCP. *See* Declaration of Samuel Brown ¶ 4,
17 attached herein as Exhibit 1.

18 7. No extension for Butler to file or serve a proper Answer or Motion to
19 Dismiss has been requested or granted. *Id.* at ¶ 5.

8. Butler is not in active military service. *See* Declaration of Samuel Brown ¶ 6, attached hereto as Exhibit 1. 50 U.S.C. § 3931 is no bar to entry of a default judgment against Defendant.

9. Butler is in default, and the Clerk should enter their default as mandated by Rule 55(a).

WHEREFORE, premises considered, Plaintiffs respectfully request that the Clerk enter the default of separate Defendant Michael Butler, and that the Court award all other good and proper relief to which they may be entitled, whether or not specifically requested herein.

DATED this 22nd day of February, 2024.

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